

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
FirstEnergy Generation Corp., for an Order)
Granting a Waiver of Rule 4901:1-41-03(A),) Case No. 10-2985-EL-ACP
Ohio Administrative Code.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Waiver from)
Specific Provisions of Rule 4901:1-41-03(A),) Case No. 10-3078-EL-WVR
Ohio Administrative Code.)

In the Matter of the Application of)
American Electric Power Service Corp., for)
an Order Granting a Waiver of Rule 4901:1-) Case No. 10-3103-EL-ACP
41-03(A), Ohio Administrative Code.)

ENTRY

The Commission finds:

- (1) On April 15, 2009, the Commission established greenhouse gas (GHG) emissions reporting requirements for electric utilities and electric services companies pursuant to Section 4928.68, Revised Code. *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7, of the Ohio Administrative Code, Pursuant to Section 4928.66, Revised Code, as Amended by Senate Bill No. 221, Case No. 08-888-EL-ORD, Opinion and Order, (April 15, 2009).*
- (2) Rule 4901:1-41-03(A), Ohio Administrative Code (O.A.C.), requires electric utilities to become participating members in the climate registry and to report GHG emissions according to the protocols approved by the climate registry.
- (3) Duke Energy Ohio, Inc., (Duke) and Columbus Southern Power Company and Ohio Power Company, (AEP Ohio) are public utilities as defined in Section 4905.02, Revised Code, and both own and operate electric generating facilities located in Ohio that emit greenhouse gases. Duke and AEP Ohio are subject to Rule 4901:1-41-03, O.A.C.

- (4) FirstEnergy Generation Corp. (FirstEnergy) is an owner and operator of electric generating facilities located in Ohio that emit greenhouse gases. FirstEnergy alleges that it is not a public utility as defined by Section 4905.02, Revised Code, and its facilities are not owned or operated by a public utility subject to the Commission's jurisdiction. FirstEnergy states that the Commission previously indicated that FirstEnergy is subject to Rule 4901:1-41-03, O.A.C., but FirstEnergy does not waive its arguments as to the Commission's jurisdiction.
- (5) On October 30, 2009, the United States Environmental Protection Agency (US EPA) issued its mandatory GHG reporting rule, 40 CFR, Part 98 (Federal GHG Rule), which became effective on January 1, 2010.
- (6) On December 10, 2010, FirstEnergy filed its application, requesting that the Commission grant FirstEnergy a waiver of the requirements of Rule 4901:1-41-03(A), O.A.C., and allow FirstEnergy to satisfy the reporting requirements through compliance with the Federal GHG Rule, unless otherwise ordered by the Commission.
- (7) On December 20, 2010, Duke filed its application, requesting that the Commission grant Duke a waiver of the requirements of Rule 4901:1-41-03(A), O.A.C., and allow Duke to satisfy the reporting requirements through compliance with the Federal GHG Rule, unless otherwise ordered by the Commission.
- (8) On December 21, 2010, AEP Ohio filed its application, requesting that the Commission grant AEP Ohio a waiver of the requirements of Rule 4901:1-41-03(A), O.A.C., and allow AEP Ohio to satisfy the reporting requirements through compliance with the Federal GHG Rule, unless otherwise ordered by the Commission.
- (9) The Commission finds waivers of Rule 4901:1-41-03(A), O.A.C. are reasonable and should be granted, with the provision that copies of the Federal GHG reports be docketed with the Commission, subject to appropriate protections for confidential information. The Commission will open a separate docket for the filing of the Federal GHG Reports. The Commission further notes, if the US EPA's GHG Emission Reporting Program is not completed by the end of this calendar year, the Commission may revisit its decision to grant waiver requests of Rule 4901:1-41-03(A), O.A.C.

It is, therefore,

ORDERED, That, in accordance with the above findings, FirstEnergy, Duke, and AEP Ohio are hereby granted waivers of Rule 4901:1-41-03(A), O.A.C., and may satisfy the requirement through compliance with the Federal GHG Rule, until otherwise ordered by the Commission. It is, further,


ORDERED, That a copy of this entry be served upon all persons of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Valerie A. Lemmie


Steven D. Lesser


Cheryl L. Roberto

JJT/sc

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Renee J. Jenkins
Secretary